

# Court of Appeals, State of Michigan

## ORDER

Paul J Nowicki III v Auto Club Insurance Association

Cynthia Diane Stephens  
Presiding Judge

Docket No. 306937

Michael J. Talbot

LC No. 10-014019-NF

Christopher M. Murray  
Judges

---

The Court orders that the motion for immediate consideration is GRANTED.

The motion to waive the requirements of MCR 7.209 is GRANTED.

In lieu of granting the delayed application, the Court orders, pursuant to MCR 7.205(D)(2), that the September 2, 2011, order of the Wayne Circuit Court granting plaintiff's motion for payment of attorney lien hereby is REVERSED. The materials provided to this Court do not reflect that a contingency fee agreement was filed either with the circuit court or this Court and plaintiff has not otherwise established that such an agreement was in existence at the time the payments at issue were made. *Miller v Detroit Automobile Inter-Insurance Exchange*, 139 Mich App 565, 572; 362 NW2d 837 (1984). Even assuming arguendo that such a fee agreement was reached between plaintiff and his counsel and that plaintiff had standing to bring the motion for payment of the attorney lien, nothing on the record before this Court demonstrates that plaintiff or counsel advised defendant of the agreement's existence or that defendant's agent knew of circumstances suggesting the existence of a contingency agreement under which an attorney's lien would attach before judgment. See *id.* Accordingly, the circuit court erred in granting plaintiff's motion. The case is remanded to the circuit court for further proceedings consistent with this order.

The motion for stay is DENIED.

This order is to have immediate effect, MCR 7.215(F)(2).

The Court retains no further jurisdiction.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

DEC 13 2011

Date

  
Chief Clerk